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**Human Rights Council**
**Thirty-ninth session**
10-28 September 2018
Agenda item 7
**Human rights situation in Palestine and other occupied Arab territories**

# Written statement* submitted by the United Nations Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 August 2018]

* Issued as received, in the language(s) of submission only.

# Hamas, the High Commissioner and Special Rapporteur Michael Lynk

In response to Israel's acts of self-defense on the Gaza border to prevent armed Hamas terrorists from storming the fence and heeding the calls of Hamas leaders to massacre Israelis—in their own words, to "tear out their hearts from their bodies,"[1] and "draw the map of return in blood"[2]—UN human rights officials rushed to condemn only Israel for "excessive" and "disproportionate" force against supposedly "unarmed demonstrators," while completely ignoring Hamas's role in, and responsibility for, the violence.

On May 18, 2018, the UN Human Rights Council held a special session on the violence, and adopted a one-sided resolution condemning only Israel, and failing to even mention Hamas.[3] The resolution presumed Israel guilty of violations of international humanitarian law, international human rights law, and war crimes, and created an international Commission of Inquiry into Israel's actions.

Statements by High Commissioner Zeid Hussein (May 18)[4] and Palestine Rapporteur Michael Lynk (May 15 and 18)[5] were replete with inaccuracies and misrepresentations. Notably missing was any condemnation of Hamas for its blatant violations of International Law, and incitement to violence and mass murder; acknowledgement of Hamas's responsibility for the terrible plight of Gazans; or any call for accountability from Hamas.

The two main misrepresentations by Zeid and Lynk are addressed below:

## 1. Gaza demonstrators were "unarmed" and "non-violent"

Many of the so-called protesters were armed members of Hamas's military wing who engaged in terrorism along the border, including throwing Molotov cocktails, catapulting flaming kites into Israeli territory, stone-throwing, attempting to cut through the border fence to infiltrate Israel, and firing at Israeli soldiers.[6] The flaming kites have burned over 7,000 acres of agricultural and ecological land, and threatened the welfare of Israeli civilians, including children plating at kindergarten.[7]

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1 Arsen Ostrovsky (@Ostrov_A), TWITTER (May 15, 2018, 1:09 AM), https://twitter.com/Ostrov_A/status/996301534718844928.

2 David M. Halbfinger, Isabel Kershner and Declan Walsh, *Israel Kills Dozens at Gaza Border as U.S. Embassy Opens in Jerusalem*, NEW YORK TIMES (May 14, 2018), https://www.nytimes.com/2018/05/14/world/middleeast/gaza-protests-palestinians-us-embassy.html.

3 Violations of international law in the context of large-scale civilian protests in the Occupied Palestinian Territory, including East Jerusalem, Human Rights Council Twenty-Eighth special session U.N. Doc. A/HRC/Res/S-28/1 (May 18, 2018).

4 Statement by UN High Commissioner for Human Rights Zeid Ra'ad al-Hussein, Special Session of the Human Rights Council on the deteriorating human rights situation in the Occupied Palestinian Territory, including East Jerusalem (May 18, 2018), http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23100&LangID=E.

5 Statement by Special Rapporteur for Palestine Michael Lynk, 28th Special Session of Human Rights Council, UN Web TV (May 18, 2018), http://webtv.un.org/meetings-events/treaty-bodies/www.un.org/news/watch/1st-meeting-28th-special-session-of-human-rights-council/5786571192001/?term=&sort=date; UN human rights expert condemns horrific violence in Gaza, Office of the High Commissioner (May 15, 2018), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23087&LangID=E.

6 Jonathan D. Halevi, *'Great Return March' Incorporates Hamas Warfare Tactics*, ALGEMEINER (May 2, 2018), https://www.algemeiner.com/2018/05/02/great-return-march-incorporates-hamas-warfare-tactics/.

7 Almog Ben Zikri, Israel Battles More Blazes in Gaza-border Communities as Incendiary Balloons Continue, HAARETZ (July 25, 2018), https://www.haaretz.com/israel-news/.premium-israel-battles-more-blazes-as-incendiary-balloons-continue-1.6314546; Flaming balloon from Gaza lands in preschool near children at play, TIMES OF ISRAEL (July 17, 2018), https://www.timesofisrael.com/flaming-balloon-from-gaza-lands-in-preschool-near-children-at-play/.

Just before the May 14 protests, Hamas leaders posted to social media maps of the quickest routes to Israeli towns and villages. The maps were widely shared on social media by Gazans intent on invading those communities with statements like: "Murder, slaughter, burn and never show them any mercy;" and "Pounce on them with knives."[8]

Even Hamas's co-founder Mahmoud al-Zahhar admitted to Al-Jazeera that calling the border protests "peaceful resistance" is "deceiving the public."[9] Hamas also admitted that 50 out of the 62 people killed on May 14 were its own operatives.[10] Most of the casualties have since been identified as members of terrorist groups.

**2. "Lethal force" is permitted only in cases of "imminent threat" of death or serious injury**

Rather than applying International Humanitarian Law (IHL) to Israel's use of force, Zeid and Lynk incorrectly apply a human rights law enforcement paradigm. However, Israel's conflict with Hamas is an "armed conflict" under International Law. Thus, the violent attacks on the border fence trigger Israel's right to self-defense under IHL.

The right to self-defense is enshrined in Article 51 of the UN Charter,[11] and does not require that a state wait to be attacked and suffer casualties before it can fight back.[12] In addition, Palestinian rioters directly participating in hostilities are not entitled to the protection afforded to civilians. Article 51(3) of the First Additional Protocol to the Geneva Conventions (1949) permits attacks on civilians "for such time as they take direct part in hostilities."[13] Therefore, engaging in violent acts intended to breach Israel's border fence with Gaza and/or cause harm on the Israeli side of the fence would cause rioters to lose protected civilian status. Furthermore, under IHL, the concept of proportionality is not about the numbers (which side had more deaths), as Zeid outrageously suggested. Rather, it is a prospective consideration based on the military commander's assessment of whether the expected civilian casualties will be excessive in relation to the anticipated military gain. In fact, IHL accepts the possibility of civilian casualties.[14] The above statements completely ignore the very real threat to the lives of Israelis civilians by Hamas terrorists seeking to breach the Gaza border fence intent on infiltrating nearby Israeli communities and murdering Israelis.

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8 *Id.*

9 *Amid Antisemitic and "Death to Israel" Chants, Hamas Political Bureau Chairman Ismail Haniyeh Vows: We Shall Never Recognize Israel – Scenes from Gaza "Return March,"* Clip #6570, MEMRI (May 11, 2018), https://www.memri.org/tv/senior-hamas-official-mahmoud-zahhar-on-gaza-protests-this-is-not-peaceful-resistance.

10 *Hamas Political Bureau Member Salah al-Bardawil: 50 of the Martyrs Killed in Gaza Were From Hamas, 12 Regular People*, MEMRI (May 16, 2018), https://www.memri.org/tv/hamas-politburo-member-bardawil-fifty-martyrs-were-hamas-members.

11 Article 51, UN Charter, http://www.un.org/en/sections/un-charter/chapter-vii/.

12 David Kretzmer, *The Inherent Right to Self-Defence and Proportionality in Jus Ad Bellum*, 24 EJIL 1, 235-282, 248 (2013).

13 Article 51(3) of Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I); Commentary of 1987 to Article 51(3), Protection of the Civilian Population, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=5E5142B6BA102B45C12563CD00434741.

14 Article 57 of Protocol I to the Geneva Conventions of 12 Aug. 1949.

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**Human Rights Council**
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Agenda item 9
**Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action**

# Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination, the Indian Movement "Tupaj Amaru", the International-Lawyers.Org, the Union of Arab Jurists and the United Towns Agency for North-South Cooperation, non-governmental organizations in special consultative status, the International Educational Development, Inc. and the World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[27 August 2018]

* Issued as received, in the language(s) of submission only.

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# Basic Law: Israel as the Nation-State of the Jewish People••

**Introduction:**

On 19 July 2018, the government of Israel has further deepened the concerns of the international community regarding its institutionalized discrimination against national minorities, notably Palestinian and Arab populations within its territory, by adopting a new divisive nation-state law. Israel's Parliament adopted during its second and third plenary reading its 14th basic law that represents a constitutional amendment. The 120-seat Parliament voted for this law with 62 in favor, 55 against and two abstentions.

**Background:**

The New Basic Law includes 11 discriminatory provisions such as recognizing the land of Israel as the "historical homeland" of all Jewish people who are entitled to enjoy their natural, cultural, religious and historical right to self-determination". Another provision declares Jerusalem as Israel's capital, complete and united. It also defines the state symbols, memorials and independence days based exclusively on Jewish heritage (the Star of David in the flag, the Hatikvah as the national anthem, the seven-branched menorah as its emblem, Hebrew calendar along with the Gregorian one as official calendars).

Furthermore, the law gives the Arabic language a *special* status leaving Hebrew as the only official language. Additionally, it promotes the establishment and consolidation of Jewish settlements, insisting that it is a national value.

By nature, this bill automatically excludes and discriminates against Palestinians and other minorities.

**Objections:**

Prior to and following the vote, protestors gathered in Tel Aviv to voice their objection to this new law. Critics of the new law fear that history will repeat itself: the law is regarded by many as an attempt to impose apartheid and dual rule, comparable to anti-Semitic policies in 20th century Europe. Tamar Zandberg, a politician and an Israeli activist asserted: "The nation-state law was taken out of storage and apartheid pops out of the box". Both Israeli president, Reuven Rivlin and Israel's attorney general, Avichai Mandelblit, opposed this law, warning that the law would segregate between communities on the basis of religion and nationality and thus would hurt all Jewish people.

Whereas proponents of the law allege that the bill is a simple reminder of Jews' natural national rights as the majority, it has been highly criticized for failing to consider minorities' basic rights by omitting articles relating to equality as provided by Israel's Declaration of Independence of 1948.

Furthermore, the change of the Status of the Arabic language (Used by 20% of the population including 36% of Jerusalem population: large Arab minority) mainly allows its use in Israeli institutions and thus was criticized by many for entrenching the downgrading of Arabs to second-class citizens.

Additionally, the law has been described as vague and unclear considering Provision 7 that stipulates "The state views the development of Jewish settlement as a national value and will act to encourage and promote its establishment and consolidation". This may refer to settlements in the West Bank considered illegal under international law.

**Jewish Israeli Statements:**

Prime Minister Netanyahu has defended the law saying, "We engraved in the stone of law our language, our anthem, and our flag. We have enshrined the fact that Israel is the nation-state of the Jewish people». Furthering their defense, the law's sponsor, Knesset Foreign Affairs and Defence Committee chairman Avi Dichter, reassured that Israel is democratic and thus implicitly assumed that the new law does not infringe on citizens' civil rights.

**Palestinian and Israeli Arabs Response:**

The aftermath of the enactment of the bill has immediately sparked anger and outrage from Israel's Arab members of the Knesset (MK). In fact, they have long been criticizing the perpetual institutionalized discrimination against them in terms of education, health, and housing amongst other things.

Notably, one of the Arab members of the Knesset compared Israeli practices to those of South Africa's apartheid. Ahmad Tibi and Yousef Jabareen, members of the Joint Arab List party, delivered in a joint statement their discontent: "The law of nationalism is the last nail in the coffin of the so-called Israeli democracy, which has been dying in recent

years because of its suffering from chronic racist diseases that have been afflicted with fascism and directed to Apartheid through the legislation of this law". Other MKs demonstrated their anger by waving a black flag while Zoheir Bahloul, another MK just resigned from the Knesset.

It has become a fact from the different reactions that this bill has generated strong reactions at the national level but also at the international one.

**Concerns raised by the European Union, Israeli Arab politicians, Israeli opposition politicians, US liberal Jewish groups as well as the Arab League and other Arab countries:**

The controversy of this law and the obvious exclusion of other minority groups also caught the attention of the international community. Jerry Silverman, president and CEO of the Jewish Federations of North America expressed his concern by paying a visit to Israel's president saying that even after editing the bill, the reputation of Israel has already been tarnished at the international level.

Furthermore, he believes Israel should be educating young adults and focusing on lifting the boycott and sanctions on Israel instead of enacting bills that would create more obstacles to the achievement of these goals. The president of the Union for Reform Judaism also condemned this bill as "sad and unnecessary" while Daniel Sokatch, speaking in the name of the New Israel Fund referred to it as "tribalism at its worst".

The spokeswoman of the European Union Foreign Affairs Chief expressed EU's objection to this bill as it endangers the two-state solution, which for the EU is the unique alternative to this conflict and that this bill is a clear obstacle to it. "We are concerned, we have expressed this concern and we will continue to engage with Israeli authorities in this context," she said.

Turkey was extremely vocal when expressing its complete opposition to this new bill. The Foreign Ministry in Ankara delivered a statement saying that: "Identifying the right to self-determination as a right given only to Jews is the result of an outdated and discriminatory mentality,". Furthering their absolute opposition, President Erdogan spoke to the Justice and Development Party (AK) describing this law as fascist and racist: "There is no difference between Hitler's Aryan race obsession and Israel's mentality. Hitler's spirit has re-emerged among administrators in Israel".

The Arab League also denounced this law as "worthless, unacceptable, and illegitimate". They stated that it is another attempt to annex the West Bank in the form of an apartheid, discrimination and ethnic cleansing policy and that the international community should intervene to make Israel respect International Laws and hold it accountable for past violations.

Despite calls by the UN organs on Israel to respect Palestinians' inalienable right to self-determination and equal rights, and extensive work by international, regional, and civil society organizations towards the end of occupation and a just solution to the 'conflict', Palestinians continue to suffer the devastating effects of Israeli occupation policies and practices and military action. Palestinian civilians, wherever they live, are facing conditions beneath human dignity. Yet Israel rigorously continues with its illegal colonialist activities and discriminatory practices further entrenching its system of oppression of Palestinians, including by this so-called new law.

**The signatories to this statement:**

- Urge the Security Council as the main promoter and protector of peace to take initiatives along with the General Assembly and other relevant bodies to remedy this decades-long tragedy by condemning the discriminatory measures taken by Israel. Further actions should be taken regarding the unwillingness of Israel to abide by the UN resolutions in particular concerning the right to self-determination (res.3236/1974).
- Call upon all the relevant bodies to hold accountable those responsible for enacting discriminatory laws such as the New Nation law that would translate into another apartheid.
- We are extremely worried about Israel's refusal to stop illegal settlement activities and more so after this new law that exclusively considers Jewish settlements a national value.
- The UN should exert all efforts for the revocation of the New Nation-State Law that explicitly mentions Jewish national rights but fails to do the same for minorities.

**Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, Human Rights Defenders (HRD), The Brussells Tribunal, The Iraqi Commission for Human Rights (ICHR), Association of Humanitarian Lawyers (AHL), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women

(GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, NGOs without consultative status, also share the views expressed in this statement.